

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First : Robert Bruce Spertell
Named
Inventor
App. No : 09/637,923
Filed : August 14, 2000
For : METHOD AND APPARATUS FOR
TREATING SUBCUTANEOUS
HISTOLOGICAL FEATURES
Examiner : Fadi H. Dabour
Art Unit : 3742

STATEMENT OF JAN WALLACE SUPPORTING UNINTENTIONAL ABANDONMENT
UNDER 37 C.F.R. § 1.137(b)

I, Jan Wallace, do hereby state as follows:

1. I am a citizen of Canada, and am currently the Chief Executive Officer of Davi Skin Care, Inc. My mailing address is 6929 E. Cheney Rd, Paradise Valley, AZ 85253.
2. I have reviewed the Decision on Petition mailed May 30, 2008 dismissing the petition to revive the above-identified application under 37 C.F.R. § 1.137(b).
3. I was formerly the President and Chief Executive Officer of both MW Medical, Inc. and its wholly owned subsidiary Microwave Medical Corporation from July 1999 until June 2004.
4. With respect to the above-identified application, I understand the following facts to be true. Microwave Medical Corporation and MW Medical, Inc. filed patent applications, including U.S. Pat. Application No. 09/637,923 ("923 Application") and its parent application, U.S. Pat. Application No. 08/904,175, now U.S. Patent No. 6,104,959, both to Robert B. Spertell. The parent application of the '923 Application was assigned from Spertell to Microwave Medical Corporation. The assignment document expressly assigned all divisional applications (such as the '923 Application) to Microwave Medical as well, and was recorded in the United States Patent and Trademark Office on July 31, 1997 at Reel 008662 and Frame 0965.

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5. Grace Sim was the Chief Financial Officer of both MW Medical, Inc. and Microwave Medical Corporation from before the above-identified application was filed until June 2004. Ms. Sim was the intellectual property contact person at MW Medical, Inc. and Microwave Medical Corporation who liaised with the patent attorneys and was responsible for making decisions regarding both companies' intellectual property. I was generally uninvolved with management of the intellectual property, and at no point did I give any instructions to Ms. Sim or the patent attorneys to abandon any of the intellectual property.

6. On January 22, 2002, due to ongoing financial difficulties, both MW Medical, Inc. and Microwave Medical Corporation filed for Chapter 11 bankruptcy in the District Court of Arizona. As Microwave Medical Corporation was a wholly owned subsidiary of MW Medical, Inc., the bankruptcy cases, and thus the assets and claims of the two entities, were consolidated and were owned by the post-bankruptcy successor company MW Medical, Inc. following emergence from bankruptcy. I had personally loaned money to Microwave Medical and MW Medical to finance their operations, and I was a creditor owed a substantial sum of money. Shortly after entering bankruptcy, circa April 2002, we vacated our leased Scottsdale, AZ headquarters at 6617 N. Scottsdale Road, Suite 103, Scottsdale, AZ 85253 due to cost considerations.

7. MW Medical emerged from bankruptcy on November 19, 2002 upon the close of the bankruptcy estate. At the close of bankruptcy, I remained the largest creditor of MW Medical.

8. On March 21, 2003, MW Medical assigned all of its intellectual property (including the above-identified application) and some other assets to me in exchange for a reduction in the amount of debt that MW Medical owed to me. See Exhibit 13.

9. I have minimal experience with the patent process. At the time MW Medical assigned its intellectual property to me, I assumed that all of the patent applications were issued or still pending and no further action was required to keep them in force. Thus, I did not believe that there was any reason to contact the patent attorneys to check on the status of the intellectual property.

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10. I did not receive any correspondence from, and had no contact with any of the patent attorneys from March 21, 2003 (when the intellectual property was assigned to me from MW Medical), until late 2007, when a third party, Mark Deem of Miramar Labs, Inc. contacted me (without any solicitation by me) circa November 2007 regarding potentially acquiring the assets that I had acquired from MW Medical, Inc., including the above-identified application. During the course of negotiations to purchase the assets that I had acquired from MW Medical, I was surprised to learn from Deem that two related issued patents (U.S. Pat. Nos. 6,104,959 and 6,334,174) had expired for non-payment of maintenance fees and that the above-identified patent application had not issued and in fact had gone abandoned for failure to respond to an Office Action mailed June 5, 2002. I understand that the above-identified application went abandoned on September 6, 2002.

11. Shortly after I learned that the two issued patents had expired and that the present application had gone abandoned, I contacted Douglas Hanscom of Jones Tullar and Cooper, P.C., who I was informed by Mr. Deem was the attorney of record of the above-identified patent application. I also retained a patent agent, Joanne Bourguignon at Olympic Patent Works in Seattle, WA to independently confirm the status of the patents and the aforementioned application, obtain the file history, and determine whether the patents and present application could be revived. Petitions to accept unintentionally delayed payment of a maintenance fee on the two issued patent Nos. 6,104,959 and 6,334,074 were filed by Ms. Bourguignon at my request on December 20, 2007.

12. I was informed by Ms. Bourguignon that she was unable to readily obtain the file history of the above-identified application from the USPTO because the application had never been published and thus the file history was not publicly available. While still in the process of confirming that the above-identified application had gone abandoned and attempting to obtain the file history, I assigned the rights to, among other things, the two issued patents and the present application to Miramar Labs, Inc. on January 24, 2008 (see Exhibit 14).

13. I believe that the entire delay from the time of the abandonment of the '923 Application, to at least the date of my assignment of the present application to Miramar Labs, Inc. on January 24, 2008 was unintentional.

14. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that

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these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued therefrom.

Date:

Sept. 05 / 08



Jan Wallace

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